

00STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JANICE O’CONNOR	:	DETERMINATION DTA NO. 830269
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2017.	:	

Petitioner, Janice O’Connor, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2017.

A videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on December 15, 2022, at 10:30 a.m., with the final brief to be submitted by April 6, 2023, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Patrick Bryant, EA. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O’Brien, Esq., of counsel).

ISSUE

Whether petitioner has proven that the interest amount asserted in a notice of deficiency issued to her for tax year 2017 is erroneous.

FINDINGS OF FACT

1. On April 13, 2018, petitioner, Janice O’Connor, filed an electronic request for an extension of time within which to file her New York State personal income tax return for the tax year 2017. Thereafter, she filed her New York State resident income tax return, form IT-201, for the year 2017 (return), on July 6, 2018.

2. On her return, petitioner requested a total refund of \$4,557.00. Included within the refund request was a college tuition credit of \$800.00. On August 6, 2018, the Division of Taxation (Division) issued petitioner the total refund requested on her return.

3. On October 2, 2020, the Division issued a statement of proposed audit change to petitioner that disallowed \$400.00 of the college tuition credit that she claimed on her 2017 return.

4. The Division issued to petitioner a notice of deficiency, assessment number L-052153000, dated November 18, 2020, asserting a deficiency of tax in the amount of \$400.00 and interest in the amount of \$88.73.

5. Petitioner paid the tax asserted in the amount of \$400.00.

6. Petitioner filed a timely petition with the Division of Tax Appeals in protest of the notice. Petitioner does not contest the tax asserted due, but rather, disputes the interest calculation only.

CONCLUSIONS OF LAW

A. As stated above, petitioner only disputes how the interest was calculated on the notice issued to her. It is initially noted that, when the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice and the burden of proof is on the taxpayer to show, by clear and convincing evidence, that the proposed deficiency is erroneous (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; *see Matter of Gilmartin v Tax Appeals Trib.*, 31 AD3d 1008 [3d Dept 2006]; *see also Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]).

B. Tax Law § 652 (a) states, in pertinent part, as follows:

“a person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).”

Income tax withheld from a taxpayer during a calendar year is deemed to have been paid on April 15 of the following year, i.e., the due date for the filing of the return (Tax Law § 687 [i]). The Division is authorized to impose interest on any underpayment of tax (Tax Law § 684 [a]). Such interest “accrues on any balance of New York State personal income tax . . . due from the due date of the New York State personal income tax return (determined without regard to any extension of time to file), to the date of payment” (20 NYCRR 157.7 [a]). An underpayment of tax or deficiency is the amount of tax imposed by article 22 less the amount of tax reported on a return (Tax Law § 681 [g]).

C. Petitioner claimed \$800.00 in college tuition credit on her return for the year at issue, \$400.00 of which was disallowed by the Division. Petitioner does not dispute the Division’s partial disallowance of the credit or the determination of tax due, and only disputes the interest. Petitioner raised the same issue and arguments for a prior year, tax year 2016, in *Matter of O’Connor* (Tax Appeals Tribunal, July 20, 2023). The Tax Appeals Tribunal (Tribunal) rejected petitioner’s arguments. As noted by the Tribunal, the college tuition credit is refundable; that is, where the credit exceeds the tax imposed under article 22, such excess is treated as an overpayment of tax (*Matter of O’Connor; see also* Tax Law § 606 [t] [5]). The Tribunal determined that:

“By her claim of \$400.00 of refundable credit to which she was not entitled, petitioner had a balance due of \$400.00 in New York State personal income tax for the 2016 tax year. This difference between her reported net liability and her actual net liability is a deficiency under Tax Law § 681 (g), and, pursuant to Tax Law § 652 (a) and 20 NYCRR 157.7 (a), interest imposed on such deficiency runs

from April 15, 2017, even though the refund was not issued until November 2, 2017” (*id.*).

D. The same holding controls here. Petitioner had a balance due of \$400.00 in New York State personal income tax for the 2017 tax year by her claim of \$400.00 of a refundable credit to which she was not entitled. As with the prior year, this difference between her reported net liability and her actual net liability is a deficiency under Tax Law § 681 (g), and interest imposed on such deficiency runs from April 15, 2018, even though the refund was not issued until August 6, 2018 (*see id.*; Tax Law § 652 [a]; 20 NYCRR 157.7 [a]).

E. The petition of Janice O’Connor is denied and the notice of deficiency, dated November 18, 2020, is sustained.

DATED: Albany, New York
August 31, 2023

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE